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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,651	08/07/2006	Georg Geywitz	8369.028.US0000	9253
77407 7590 12/08/2009 Novak Druce & Quigg LLP 1300 I Street NW Suite 1000 West Tower Washington, DC 20005				
EXAMINER LEWIS, TISHA D				
ART UNIT 3655		PAPER NUMBER		
MAIL DATE 12/08/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,651

Applicant(s)

GEYWITZ ET AL.

Examiner

TISHA D. LEWIS

Art Unit

3655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-14 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

The following is a response to the amendment received on September 8, 2009 which has been entered.

Response to Arguments

Claims 1-14 are pending in the application.

Applicant's arguments filed 9/8/2009 have been fully considered but they are not persuasive. As to applicants argument that the office action filed 6/8/2009 seems to read over the limitation recited "when at least one approval criterion is satisfied for an engine torque (M)....." and that Hess indicates the criterion used for stipulating a desired torque can be independent of engine torque is acknowledged, however, Hess does disclose an approval criterion met for engine torque dependent on driving state of vehicle (Miact corresponds to the claimed engine torque and the operating variables sent to the ECU corresponds to the criterion). Claim 1 doesn't disclose exactly what the approval criterion has to be, just that it is dependent on driving state of vehicle wherein the inputs to the ECU of Hess are indicators of the driving state of the vehicle in which the engine torque is dependent on (column 2, lines 40-45, discloses that the variables are used for torque control).

Claim Objections

Claim 5 is objected to because of the following informalities:

-The limitations reciting "the engine speed and the quotient of the engine speed" should be changed to "an engine speed and a quotient of the engine speed" to correct lack of antecedent basis of these limitations. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 8-10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tabata et al 6258008 (IDS reference) in view of Hess. (As to claim 1), Tabata discloses a method of controlling the engine having a manual transmission wherein the engine torque is reduced dependent on operating conditions of the vehicle (discloses that the transmission for engine torque reduction can be manual) to avoid damage to a clutch of the vehicle during restart of the engine (as to claim 14). Tabata doesn't disclose the method for reducing the engine torque as claimed.

Hess et al discloses an engine torque control system wherein when at least one approval criteria for engine torque which is dependent on driving state of the vehicle is met (Miact corresponds to engine torque and operating variables sent to ECU 10 correspond to criteria), a default engine torque (Mi-des-L or Mi-des) is stipulated (from 104), the default torque can be reduced relative to a setpoint torque (Mi-ped) required by the position of an accelerator (beta) of the vehicle (column 3, lines 55-58 suggest that if the driver changes pedal position, then the values assume different values which suggest that the default torques Mi-des can be reduced or increased according to pedal position) and the default torque is determined as a function of at least one engine characteristic (via 32 or 34).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Tabata with the engine torque reduction method in view of Hess to optimize the dynamic of engine torque control during certain operating states of the vehicle (i.e., start phase, acceleration, etc.).

As to claim 8, Hess discloses the default torque being determined by applying a torque factor (Mi-far) to the setpoint torque (Hess discloses that Mi-ped is interpolated into multiple torques Min, Max to come up with Mi-far). As to claim 9, Hess discloses that the factor is determined from a characteristic map (the block 102 should disclose a table or map for storing the min, max values to come up with the factor. As to claim 10, Hess discloses the default torque deviating from the setpoint torque to initiate a throttle valve (Hess discloses that when the driver changes pedal position, torque values are changed and throttle flap is controlled).

Claims 2, 3, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tabata in view of Hess as applied to claim 1 above and further in view of Yoshida et al 5078109. Tabata in view of Hess discloses that the approval criteria (operating variables) can have a vehicle variable (column 1, lines 53-55), but doesn't disclose that it is a driving speed.

Yoshida discloses an engine torque control wherein a target engine torque is determined according to a vehicle speed threshold which are the ranges disclosed in Figure 11 from 0 to 80 km/h, encompasses 25 to 40 and 35 km/h.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Tabata in view of Hess with a vehicle speed criteria in

view of Yoshida for engine torque control to obtain a desired vehicle speed, acceleration, etc.

As to claim 3, Hess discloses the default torque stipulated after a start up process of the vehicle depending on at least one engine characteristic (claim 3 discloses Mi-des used at operating state which can be a start phase).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tabata in view of Hess as applied to claim 1 above and further in view of Mabuchi et al 6742498. Tabata in view of Hess discloses a default engine torque, but does not disclose it being used for influencing engine noise.

Mabuchi et al discloses control of engine torque by setting a target torque to eliminate engine speed noise during idling.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Tabata in view of Hess with an engine noise control using engine torque control in view of Mabuchi et al to eliminate engine noise during idling.

Allowable Subject Matter

Claims 5-7 are allowed.

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 571-272-7093. The examiner can normally be reached on M-F 9:30AM TO 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT SICONOLFI can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tdl
/TISHA D. LEWIS/
Primary Examiner, Art Unit 3655
December 5, 2009